

## **REMARKS/ARGUMENTS**

### **Status of application**

The final rejection of Claims 1-44 in the Office Action mailed May 28, 2004 was affirmed by the Board of Patent Appeals and Interferences in a decision on appeal decided November 20, 2009. In addition, the Board set forth a new ground of rejection under 35 U.S.C. § 101 with respect to Claims 23 and 24. The claims have been amended to further clarify the claimed subject matter. The amended claims present new issues that were not adjudicated by the Board's decision. This Amendment is timely filed in conjunction with a proper and complete Request for Continued Examination (RCE). Accordingly, entry of the amendments to the claims and reconsideration of subject application in light of the amendments and remarks herein are respectfully requested.

### **New ground of rejection – Claims 23 and 24**

In its decision on appeal dated November 20, 2009, the Board entered a new ground of rejection as to Claims 23 and 24. Specifically, the Board rejected Claims 23 and 24 under 35 U.S.C. § 101 as failing to define patent eligible subject matter. With respect to the rejection of Claims 23 and 24 on this new ground, the Board states on page 15 of its November 20, 2009 decision:

Claims 23 recites a "program" which, when executed by a processor, causes the processor to carry out a series of steps. Claim 24 recites an "applet executable in a browser program" which, when executed by a processor, causes the processor to carry out a series of steps. A "program" and an "applet" are not physical things within any of the four statutory categories of 35 U.S.C. § 101 and therefore are not patent eligible subject matter.

Claims 23 and 24 have both been amended to recite "An apparatus comprising: one or more processors; and a computer-readable storage medium storing..." A processor and a computer-readable storage medium are physical things. Claims 23 and 24, by reciting an apparatus comprising physical things, cover only material within the four statutory categories of 35 U.S.C. § 101. Claims 23 and 24, as amended, do not cover material outside the scope of § 101. Applicant respectfully submits that the amendments to Claims 23 and 24 fully

address the Board's new ground of rejection. Removal of the new ground of rejection is respectfully requested.

#### Prior art rejection

The Office Action mailed May 28, 2004 ("Office Action") rejected Claims 1-44 under 35 U.S.C. § 103(a) as allegedly unpatentable over Krishnamurthy et al. ("*Krishnamurthy*"; U.S. Patent No. 6,389,464) in view of Spofford et al. ("*Spofford*"; U.S. Patent No. 5,913,037) and in further view of Moeller et al. ("*Moeller*"; U.S. Patent No. 6,662,208). This rejection is respectfully traversed.

Independent Claims 1, 11, 17, 23, 24 and 31 are amended to clarify that **the network packet router creates a SNMP query based on the received HTTP request and communicates the SNMP query to an SNMP daemon on the network packet router to obtain the current value of the requested MIB variable.**

Claims 1, 11, 17, 23, 24 and 31 provide the ability to obtain values of MIB variables from an SNMP daemon on a network packet router using HTTP. For example, the interface of a SNMP daemon on a network packet can be accessed from an ordinary browser by communicating directly with an HTTP daemon in the router.

None of the cited references (*Krishnamurthy*, *Spofford* or *Moeller*) disclose, suggest or motivate, either independently or in combination, querying an SNMP daemon in the router in response to receiving a HTTP request for the current value of a MIB variable at the router.

Krishnamurthy describes a site server that includes a web server that allows communication between a remote computer and the site server using HTTP. (Col. 7, l. 54 – col. 8, l. 12). One option available at the user's browser is to "Browse SNMP Management Information Base". (Fig. 4). The site server also includes an SNMP agent and a MIB database. However, Krishnamurthy does not describe the web server as querying the SNMP agent to obtain information from the MIB database. Instead, Krishnamurthy at col. 13, l. 50-64 states:

As indicated on the home page 100 (FIG. 4), an option is provided to the user for browsing the SNMP MIB database 72 at a site server 12. **The browse utility permits the user to view individual device MIBs stored in the MIB 72.** With reference to page 202 in FIG. 25, device MIBs are listed for various devices such as switches, routers, modems, multiplexers, home security devices, uninterrupted power supplies,

transducers, home appliances and medical instruments. These device MIBs are listed for illustrative purposes and other device MIBs can be downloaded and listed on the browse page 202. Device MIBs can be public or private MIBs created by users or downloaded from the Internet from a number of commercially available MIB libraries and other resources, for example.

(Emphasis added). The above-quoted portion of Krishnamurthy indicates that the web server obtains information from the MIB database directly, and *not* through an SNMP daemon as in Applicant's independent claims and not by using SNMP to query an SNMP daemon as in Applicant's independent claims. The fact that Krishnamurthy describes a web server and an SNMP agent located in the same site server does not, by itself, provide sufficient teaching to suggest or motivate the subject matter of Claims 1, 11, 17, 23, 24 and 31. As stated by the Court of Appeals for the Federal Circuit, “[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of hindsight syndrome wherein that which only the inventor taught is used against its teacher.” W. L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983).

Further, an obviousness rejection is not appropriate if substantial reconstruction or redesign of the prior art references is necessary to arrive at the invention, as is the case with the cited references, with respect to Claims 1, 11, 17, 23, 24 and 31 (see In re Ratti, 270 F. 2d 810, 123 USPQ 349 (C.C.P.A. 1959). The system of *Krishnamurthy* would have to be substantially redesigned, as would the systems of *Spofford* and *Moeller*, in order to provide for querying of an SNMP daemon using the SNMP protocol in response to an HTTP request for the current value of a MIB variable. For example, functionality of the web server in site server of *Krishnamurthy* would have to be substantially reconstructed to provide querying of the SNMP agent using SNMP which is a connectionless protocol that runs over the User Datagram Protocol and Internet Protocol (IP) stack. The need for such reconstruction plainly shows that the references do not render Applicant's claim *prima facie* obvious.

Furthermore, the fact that (1) network devices may manage and maintain MIBs containing MIB objects pertaining to the respective devices, such as referred to in *Spofford*, or the fact that (2) a switch may be configured with a database of MIB information, such as

in *Moeller*, does not provide motivation to modify Krishnamurthy's site server to "create, based on the HTTP request message, an SNMP query that requests the current value of the MIB variable" and "communicate the SNMP query to an SNMP daemon of the network packet router to obtain the current value of the MIB variable", as claimed in Applicant's independent claims.

Based on the foregoing, Applicant respectfully submits that Independent Claims 1, 11, 17, 23, 24 and 31 are now in condition for allowance.

### REMAINING CLAIMS

The pending claims not discussed so far are dependant claims that depend on an independent claim that is discussed above. Because each dependant claim includes the features of claims upon which they depend, the dependant claims are patentable for at least those reasons the claims upon which the dependant claims depend are patentable. Removal of the rejections with respect to the dependant claims and allowance of the dependant claims is respectfully requested. In addition, the dependent claims introduce additional features that independently render them patentable. Due to the fundamental differences already identified, a separate discussion of those features is not included at this time.

### Conclusion

For at least the reasons indicated above, Applicants submit that all of the pending claims (1-44) present patentable subject matter over the references of record, including that which was cited but not applied, and are in condition for allowance. Therefore, Applicants respectfully request the Office to issue a timely Notice of Allowance in this case. If the Examiner has questions regarding this case, the Examiner is invited to contact Applicant's undersigned representative.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortages in fees due in connection with the filing of this paper, including extension of time fees, or credit any overages to Deposit Account No. 50-1302.

Respectfully Submitted,

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